

## Internal Revenue Service

Number: **201422011**  
Release Date: 5/30/2014  
Index Number 2601.04-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

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Refer Reply To:  
CC:PSI:B04  
PLR-134287-13  
Date:  
January 29, 2014

In re:

### LEGEND:

Settlor =  
Date =  
Trust 1 =

Trust 2 =

State A =  
State B =  
Corporate Trustee =  
Court of State A =

Investment Advisory Committee =  
X =  
State A Statute 1 =  
State A Statute 2 =

Dear :

This letter responds to your authorized representative's letter of July 31, 2013, and other correspondence requesting generation-skipping transfer (GST) tax rulings with respect to the proposed modifications of Trust 1 and Trust 2.

The facts and representations submitted are summarized as follows. Settlor created Trust 1 during his lifetime as a revocable trust. Trust 1 became irrevocable at

Settlor's death on Date (a date prior to September 25, 1985). Under Article First, Paragraph B, of Trust 1, the trust income is to be divided equally among Settlor's children and their issue on the principle of representation. The issue of a deceased child is to take the deceased parent's share equally among themselves. Trust 1 will terminate on the expiration of a period ending twenty-one years after the death of the last survivor of those of Settlor's children and their issue who were living at the time of Settlor's death. On termination, the trustee is to: (i) divide the Trust 1 principal among the persons then entitled to trust income in the proportions as the income is then being distributed, and (ii) pay to each such person the share of principal to which he or she is thus entitled.

Settlor created Trust 2 at his death. The dispositive provisions of Trust 2 are virtually identical to those of Trust 1. Under Item IV, Paragraph (b), of Trust 2, the trust income is to be divided equally among Settlor's children and their issue on the principle of representation. The issue of a deceased child are to take the deceased parent's share equally among themselves. Trust 2 will terminate on the expiration of a period ending twenty-one years after the death of the survivor of those of Settlor's children and their issue who were living at the time of Settlor's death. On termination, the trustee is to: (i) divide the Trust 2 principal among the persons then entitled to trust income in such proportions as the income is then being distributed, and (ii) pay to each such person the share to which he or she is thus entitled.

Since Settlor's death, Trust 1 and Trust 2 have been administered and construed in accordance with State A law. Corporate Trustee is serving as the trustee. It is represented that there have been no additions to Trust 1 and Trust 2. Upon the approval of the Court of State A, Trust 1 and Trust 2 will each be judicially modified, as follows.

#### Investment Advisory Committee

Item III, Paragraph B, of Trust 1 and Item V-A, Paragraph B, of Trust 2 will be modified to provide that the trustee shall exercise all investment powers only and exclusively upon the written direction of an investment advisory committee (Committee). Under Item III, Paragraph L.1, of Trust 1 and Item V-A, Paragraph L.1, of Trust 2, the Committee will be a self-perpetuating body initially comprised of five family members, i.e., a chairperson and x other persons, representing the x number of stipital branches of Settlor's issue.

Under Item III, Paragraph L.3, of Trust 1 and Item V-A, Paragraph L.3, of Trust 2, the Committee will have the powers to: (a) designate a third party to make investment decisions; (b) remove and/or name a successor trustee; and (c) direct the trustee (and the trustee shall act solely and exclusively upon such written direction) with respect to the investment of any property, real or personal, forming a part of the trust estate.

Item III, Paragraph N, of Trust 1 and Item V-A, Paragraph N, of Trust 2 will provide that when there is a vacancy in the trustee position, the Committee may appoint a successor trustee. The Committee may remove any trustee by a majority vote. The successor trustee shall be a bank or trust company authorized to administer trusts, and together with its parent and affiliate organizations, have assets under management in excess of one billion dollars and capital surplus in excess of one billion dollars at the time of becoming trustee.

#### Change of situs

Item III, Paragraph K, of Trust 1 and Item V-A, Paragraph K, of Trust 2 will provide that the trustee shall have the power to transfer the administration of the respective trust to another jurisdiction. Upon any such transfer, the trust may thereafter, at the election of the trustee, be administered under the laws of the jurisdiction to which it has been transferred. In the case of Trust 1, Paragraph K will state that, in no event may the term of the trust continue beyond the period ending twenty-one years after the death of the last survivor of those of Settlor's children and their issue who are living at the time of Settlor's death. In the case of Trust 2, Paragraph K will state that, in no event may the term of the trust continue beyond the period ending twenty-one years after the death of the survivor of those of Settlor's children and their issue who were living at the time of Settlor's death.

Item III, Paragraph O.1, of Trust 1 and Item V-A, Paragraph O.1, of Trust B will provide that the validity, construction and effect of the provisions of the respective trust shall be governed by the laws of State A, and the administration of the respective trust shall be governed and regulated according to and by the laws of State B. Paragraph O.2 of each trust will provide that the situs of the respective trust shall be State B.

#### State A law

Under State A law, judicial proceedings may be initiated by any person to determine any question arising in the administration of any trust. State A Statute 1. If the principal place of administration becomes inappropriate for any reason, the court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, removal of the trust to another state. State A Statute 2.

#### Requested ruling

You have asked us to rule that the proposed modifications of Trust 1 and Trust 2 to provide for: (i) an investment advisory committee, and (ii) change of trust situs will not cause the trusts to lose their exempt status from GST tax.

## LAW AND ANALYSIS

Section 2601 of the Internal Revenue Code imposes a tax on every GST made after October 26, 1986. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(a) provides that the term “taxable termination” means a termination (by death, lapse of time, release of a power, or otherwise) of an interest in property held in a trust unless (A) immediately after such termination, a non-skip person has an interest in such property, or (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

Section 2612(b) provides that the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or a direct skip). Under § 2612(c)(1), a direct skip is a transfer subject to federal estate or gift tax of an interest in property to a skip person.

Under § 1433(a) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(a) of the Generation-Skipping Transfer Regulations, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) of the Act and § 26.2601-1(b)(1)(i), the GST tax does not apply to a transfer under a trust that was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added).

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax under paragraph (b)(1), (2), or (3) of this section (hereinafter referred to as an exempt trust) will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, the rules contained in this paragraph are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Thus (unless specifically noted), the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D)(1) provides that a modification of the governing instrument of an exempt trust (including a trustee distribution, settlement, or construction that does not satisfy paragraph (b)(4)(i)(A), (B), or (C) of this section) by judicial reformation, or nonjudicial reformation that is valid under applicable state law, will not cause an exempt trust to be subject to the provisions of chapter 13, if the modification does not shift a beneficial interest in the trust to any beneficiary who

occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust.

Section 26.2601-1(b)(4)(i)(D)(2) provides that for purposes of this section, a modification of an exempt trust will result in a shift in beneficial interest to a lower generation beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. To determine whether a modification of an irrevocable trust will shift a beneficial interest in a trust to a beneficiary who occupies a lower generation, the effect of the instrument on the date of the modification is measured against the effect of the instrument in existence immediately before the modification. If the effect of the modification cannot be immediately determined, it is deemed to shift a beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. A modification that is administrative in nature that only indirectly increases the amount transferred (for example, by lowering administrative costs or income taxes) will not be considered to shift a beneficial interest in the trust.

In § 26.2601-1(b)(4)(i)(E), Example 4 provides as follows. In 1980, Grantor, who was domiciled in State X, executed an irrevocable trust for the benefit of Grantor's issue, naming a State X bank as trustee. Under the terms of the trust, the trust is to terminate, in all events, no later than 21 years after the death of the last to die of certain designated individuals living at the time the trust was executed. The provisions of the trust do not specify that any particular state law is to govern the administration and construction of the trust. In State X, the common law rule against perpetuities applies to trusts. In 2002, a State Y bank is named as sole trustee. The effect of changing trustees is that the situs of the trust changes to State Y, and the laws of State Y govern the administration and construction of the trust. State Y law contains no rule against perpetuities. In this case, however, in view of the terms of the trust instrument, the trust will terminate at the same time before and after the change in situs. Accordingly, the change in situs does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the transfer. Furthermore, the change in situs does not extend the time for vesting of any beneficial interest in the trust beyond that provided for in the original trust. Therefore, the trust will not be subject to the provisions of chapter 13. If, in this example, as a result of the change in situs, State Y law governed such that the time for vesting was extended beyond the period prescribed under the terms of the original trust instrument, the trust would not retain exempt status.

In § 26.2601-1(b)(4)(i)(E), Example 10 considers the following situation. In 1980, Grantor established an irrevocable trust for the benefit of Grantor's issue, naming a

bank and five other individuals as trustees. In 2002, the appropriate local court approves a modification of the trust that decreases the number of trustees which results in lower administrative costs. The modification pertains to the administration of the trust and does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification. In addition, the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the trust will not be subject to the provisions of chapter 13.

In this case, Trust 1 and Trust 2 are exempt from the GST tax because the trusts were irrevocable on September 25, 1985, and it is represented that no additions have been made to either trust after that date. Accordingly, pursuant to § 1433(b)(2)(A) and § 26.2601-1(b)(1)(i), Trust 1 and Trust 2 are not subject to GST tax. Further, the proposed modifications of Trust 1 and Trust 2 to add an investment advisory committee are administrative in nature and, under § 26.2601-1(b)(4)(i)(D)(2), will not be considered to shift a beneficial interest to a lower generation in the trusts or to extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trusts. See Example 10 of § 26.2602-1(b)(4)(i)(E).

The trust agreements do not specify that any particular state law is to govern the respective trusts. Corporate Trustee will petition the Court of State A for permission to change the place of administration of the trusts to State B. While the proposed modifications will provide that State B law will govern the administration of the trusts, the termination dates will remain the same as provided by Settlor under State A law. Consequently, the proposed change in situs and governing law will not be considered to shift a beneficial interest to a lower generation in the trusts or to extend the time for vesting of any beneficial interest in the trusts beyond the period provided for in the original trusts.

Accordingly, based upon the facts submitted and representations made, we conclude that the proposed modifications to provide for an investment advisory committee and to change the trust situs will not cause Trust 1 or Trust 2 to lose its exempt status from GST tax.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Lorraine E. Gardner  
Senior Counsel, Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures  
Copy for § 6110 purposes